SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 773.

SUPREME LODGE KNIGHTS OF PYTHIAS, PLAINTIFF IN ERROR,

vs.

JOSEPHINE A. WEBBER.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

FILED DECEMBER 28, 1914.

(17,217.)

(17,217.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 632.

SUPREME LODGE KNIGHTS OF PYTHIAS, PLAINTIFF IN ERROR,

vs.

JOSEPHINE R. WITHERS.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Original.	Print.
Writ of error	*a*	1
Citation	*c*	1
Proof of service of citation	*d*	2
Caption	*e*	2
Transcript from circuit court of the United States for the middle district of Alabama	1	3
Transcript from circuit court of Hale county, Alabama	1	3
Summons	1	3
Complaint	2	3
Sheriff's return	4	5
Petition for removal	4	5
Bond for removal	6	7
Order for continuance	7	8
Order for removal	8	8
Clerk's certificate	8	9
Demurrer to complaint	8	9
Verdict and judgment	9	10

	Original.	Print
Bill of exceptions		
Agreement of counsel under which case was tried	10	10
Agreement as to testimony of S. W. Chadwick	10	10
Letter from board of control	11	11
Certificate of membership	12	12
Section 4 of general laws	13	13
Article IV of general laws, endowment rank	14	14
Agreement of counsel as to facts	15	15
Application for membership in endowment rank	16	15
Medical examiner's certificate	17	16
Certificate of lodge	21	20
Report of committee on character	22	21
Remittance envelope	23	21
Remittance sheet	23	22
Judge's certificate to bill of exceptions	24	22
Opinion of Bruce, J.	26	24
Order allowing writ of error	27	25
Petition for writ of error, &c.	31	29
Assignment of errors	32	29
Bond for writ of error and supersedeas	32	30
Citation and service	33	30
Clerk's certificate	34	31
Order designating Parlange, J., to sit	35	31
Agreement as to postal card	36	32
Submission	36	32
Judgment	37	33
Opinion	38	33
Petition for writ of error	38	34
Bond for writ of error	41	35
Clerk's certificate	45	37
	47	38

a UNITED STATES OF AMERICA, 88:

The President of the United States to the honorable the judges of the United States circuit court of appeals for the 5th circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, between the Supreme Lodge Knights of Pythias, a corporation, and Josephine R. Withers, a manifest error hath happened, to the great damage of the said Supreme Lodge Knights of Pythias, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighth day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
E. D. WHITE,
Associate Justice of the
Supreme Court of the United States.

b [Endorsed:] No. 666. Supreme Lodge Knights of Pythias *v.* Josephine R. Withers. Writ of error. Filed Nov. 15, 1898. J. M. McKee, clerk.

c UNITED STATES OF AMERICA, 88:

To Josephine R. Withers, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the 5th circuit, wherein The Supreme Lodge Knights of Pythias, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be

corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this eighth day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

d I hereby accept due and legal service of the within citation and waive any other or further notice thereof.
Nov. 19th, 1898.

ED. DE GRAFFENRIED,
Att'y of Josephine R. Withers.

THE STATE OF ALABAMA, }
Hale County. }

I, Thomas E. Knight, a notary public in and for Hale county, Alabama, do hereby certify that on this day Ed. de Graffenried, whose name is signed to the foregoing acceptance of service, came before me and acknowledged before me that he accepted the said service and signed his name thereto on the day the same bears date of his own free will and accord.

Witness my hand and seal this November 19th, 1898.

[Seal of Thos. E. Knight, Notary Public, Hale County, Ala.]

THOMAS E. KNIGHT,
Notary Public.

e UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1897, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Charles Parlange, United States district judge for the eastern district of Louisiana.

SUPREME LODGE OF THE KNIGHTS OF PYTHIAS, Plaintiff in Error, }
vs.
JOSEPHINE R. WITHERS, Defendant in Error. }

Be it remembered that heretofore, to wit, on the 29th day of December, 1897, a transcript of the record of the above-styled cause from the circuit court of the United States for the middle district of Alabama was filed in the office of the clerk of said United States circuit court of appeals and is in the words and figures following to wit:

1 At a term of the circuit court of the United States for the middle district of Alabama, begun and held at Montgomery, Alabama, on the first Monday in May, it being the 3rd day of said month, in the year of our Lord one thousand eight hundred and ninety-seven—present and presiding, Honorable John Bruce, United States district judge for the middle and northern districts of Alabama, sitting as circuit judge—the following proceedings were had:

JOSEPHINE R. WITHERS
vs.
THE SUPREME LODGE OF THE KNIGHTS OF PYTHIAS. } No. 780.

Transcript from the circuit court of Hale Co., Ala.

THE STATE OF ALABAMA, }
Hale County. }

Circuit Court.

To any sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon the Supreme Lodge of the Knights of Pythias, a corporation doing business in the State of Alabama, to appear at the next term of the circuit court to be held for said county, at the place of holding the same, then and there to answer the complaint of Josephine R. Withers.

Witness my hand this 3rd day of M'ch, 1896.

P. F. OWENS, *Clerk.*

2 *Complaint.*

JOSEPHINE R. WITHERS, Plaintiff,
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS, Defendant. }

The plaintiff claims of the defendant, The Supreme Lodge Knights of Pythias, a corporation duly organized and existing under and by virtue of an act of Congress of the United States, approved by the President of the United States on the 29th day of June, 1894, and which is doing business in Hale county, Alabama, the sum of three thousand dollars due by a certain instrument or policy of insurance upon the life of one R. W. Withers, and which is in words and figures as follows, to wit:

No. 11072. $3,000.

Certificate of Membership, Fourth Class.

Endowment rank of the order of Knights of Pythias.

This certifies that Brother Robert W. Withers received the endowment rank of the order of Knights of Pythias in section No. 432 on March the 2nd, 1883, and is a member in good standing in said rank. And in consideration of the representations and declarations made in his application, bearing date of January 1st, 1883, and his absolute surrender of the certificate heretofore held by him

in first and second classes for cancellation, as requested in his application for transfer to the fourth class bearing date of August the 13th, 1885, all of which is made a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment heretofore to the said endowment rank of all monthly payments, as required, and the full compliance with all the laws governing this right, now in force or that may hereafter be enacted, and shall be in good standing under said laws, the sum of three thousand dollars will be paid by the Supreme Lodge Knights of Pythias of the World, to Josephine R. Withers, wife, as directed by said brother in his application, or to such other person or persons as he may subsequently direct, by change of beneficiary; entered upon the records of the supreme secretary of the endowment rank; upon due notice and proof of death, and good standing in the rank at the time of death, and surrender of this certificate.

Provided, however, that if at the time of the death of said brother, one monthly payment to the endowment fund by
3 members holding an equal amount of endowment, shall not be sufficient to pay the amount of endowment held by said brother, the benefit to be paid in case of death shall be a sum equal to one payment to the endowment fund by each member holding an equal amount of endowment—

And it is understood and agreed, that any violation of the within-mentioned conditions, or other requirements of the laws in force governing this rite, shall render this certificate and all claims null and void, and that the said supreme lodge shall not be liable for the above sum, or any part thereof.

In witness whereof, we have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

JOHN VAN VALKENBURG,
Supreme Chancellor.

Attest: R. E. COWAN,
Supreme Keeper of Records and Seals.

Issued this 29th day of September, 1885, P. P. No. 11, at Washington, District of Columbia, and registered in Book I, folio 222.

HAHN NELSON,
Supreme Secretary.

And the plaintiff avers that the said Valkenburg, R. E. Cowan and Nelson, who signed the said above-described instrument were authorized by the said defendant to issue the same; that they duly executed and delivered the same to the said R. W. Withers for the benefit of this plaintiff; that the said R. W. Withers, from the issuance of said certificate to the time of his death complied with all the reasonable and legal requirements of the said corporation; that he regularly paid all assessments due by him to the said corporation on account of the said certificate and duly paid all of the premiums on said instrument above described; that the said R. W. Withers departed this life in Greensboro, Hale county, Alabama, in good

standing with the said corporation, under all the reasonable rules and legal regulations of the same, on November 1st, 1895, leaving this plaintiff, his widow, him surviving.

Plaintiff further avers that at the time of the issuance of the said policy the said defendant was a corporation organized and doing business under the laws of the District of Columbia, and that on said 29th day of June, 1894, the said corporation was reincorporated by the said act of Congress above described; that the said
4 corporation, The Supreme Lodge Knights of Pythias, created or reincorporated by the said act of 29th day of June, 1894, was in fact the same corporation which issued the said certificate; that the said corporation created by the act of 29th day of June, 1894, became the possessor of all the rights and assumed all of the liabilities of the said corporation which issued the said certificate, and that after the said 29th day of June, 1894, the said R. W. Withers regularly paid to the endowment rank of said The Supreme Lodge Knights of Pythias, all amounts due by him as a holder of said certificate or as a member of said order.

And this plaintiff avers that the said, The Supreme Lodge Knights of Pythias, was at the time of the issuance of the said certificate, and is now, a company authorized by its by-laws and by the articles of its incorporation to insure the lives of its members for the benefit of those dependent upon them.

The plaintiff further avers that this plaintiff notified the legally constituted officers of the said defendant of the death of said R. W. Withers, and called upon them for payment and for blanks upon which to make the customary proof of death, but that the said legally appointed and constituted officers of said defendant refused to furnish this plaintiff with any blanks for said purpose, and notified this plaintiff that under no circumstances would the said defendant pay the said sum due upon the said certificate or instrument in writing or any part of the same, and which said sum of money with the interest thereon is now due and unpaid, and the plaintiff brings suit.

SEAY AND DE GRAFFENREID,
Att'ys for Pl'ff.

Filed March 3rd, 1896.

B. F. OWENS, *Clerk.*

Executed by leaving a copy of the within summons and complaint with E. T. Hutchinson, keeper of records and seals, and S. W. Chadwick, master of exchecker of Eureka Lodge No. 29 Knights of Pythias, Greensboro, Alabama. Said E. T. Hutchinson and S. W. Chadwick being agents of the Supreme Lodge Knights of Pythias residing in Greensboro, Ala., March 5th, 1896.

R. W. DRAKE, *Sheriff.*

Petition for Removal.

JOSEPHINE R. WITHERS
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS, a Corporation under the Laws of Congress of the United States.

To the honorable the circuit court of the State of Alabama for the county of Hale:

The petition of The Supreme Lodge Knights of Pythias, the defendants in the above-entitled cause, respectfully shows unto your honor:

1st. That it, The Supreme Lodge Knights of Pythias, is the defendant in an action at law brought against it by Josephine R. Withers in this honorable court, and that it appears in and by said complaint that petitioner is a corporation under and by virtue of the laws of the Congress of the United States, and was such at the time of the institution of said suit, and is still such corporation, under the laws of the United States as above stated.

The said Josephine R. Withers was, at the time of bringing said suit, and still is, a resident citizen of the county of Hale and State of Alabama.

2nd. That the said action is a suit of a civil nature at common law, in which the matter in dispute exceeds, exclusion of interest and costs, the sum or value of two thousand dollars, and that said controversy arises under the constitution or laws of the United States, and that your petitioner was, at the time of instituting said suit, a corporation organized and existing under and by virtue of the laws of the United States.

3rd. Petitioner offers herewith a bond with good and sufficient surety for its entering into the circuit court of the United States for the southern division of the northern district of Alabama, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by the said circuit court if the said court shall hold that said suit was wrongfully or improperly removed thereto; that this petition is filed within the time allowed by law for pleading at the first term of this court after the institution of the suit.

4th. That by the act of Congress entitled "An act to amend the act of Congress approved March 3rd, 1875, entitled An act to determine the jurisdiction of the circuit court of the United States, and to regulate the removal of causes from State courts, and for other purposes, and to further regulate the jurisdiction of the circuit court of the United States, and for other purposes, approved March 3rd, 1887, as amended by an act entitled An act to correct the enrollment of an act approved March 3, 1887, entitled An act to amend sections 1, 2, 3, and 10 of an act to determine the jurisdiction of the circuit court- of the United States, and to regulate the removal of causes from the State courts, and for other purposes, approved March 3d, 1873, approved August 13, 1888," it is the duty of this

honorable court to accept this petition and the said bond, and to proceed no further in this action.

6 Wherefore petitioner prays this honorable court to proceed no further herein except to make an order for the removal of this cause to said circuit court of the United States for the southern division of the northern district of Alabama, and to accept said surety and bond; and as in duty bound it will ever pray.

THOS. G. & CHAS. P. JONES,
Attorneys for Petitioners.

STATE OF ALABAMA, }
Montgomery County. }

Personally appeared before me Leon Weil, a notary public, Chas. P. Jones, who is known to me, and who, being by me duly sworn, deposes and says that he is the attorney of the petitioner in the above petition; that he has read such petition, and knows the contents thereof and the statements therein contained are true.

CHAS. P. JONES.

Subscribed and sworn to before me Apr. 6th, 1896.

LEON WEIL,
Notary Public, Mty. Co., Ala.

Filed April 7th, 1896.

P. F. OWENS, *Clerk.*

Bond for Removal.

JOSEPHINE R. WITHERS
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS, a Corporation under the Laws of Congress of the United States.

Know all men by these presents, that we, The Supreme Lodge Knights of Pythias, the defendant in the above-entitled cause, as principal, and F. M. Billing and Chas. P. Jones as sureties, are held and firmly bound unto Josephine R. Withers, plaintiff in the above-entitled action, in the sum of five hundred dollars, for the payment of which well and truly to be made we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof we have hereunto set our hands and seal- this the 6th April, 1896.

The condition of the above obligation is such that, whereas the Supreme Lodge Knights of Pythias have filed in the circuit court of Hale county a petition for the removal of the above-entitled cause, action or suit wherein Josephine R. Withers is

7 plaintiff and said Supreme Lodge Knights of Pythias is defendant, from the circuit court of Hale county, Alabama, to the circuit court of the United States for the southern division of the northern district of Alabama.

Now therefore the condition of the above obligation is such, that if the above-bound Supreme Lodge Knights of Pythias shall

and do well and truly enter or cause to be entered in the said circuit court of the United States for the southern division of the northern district of Alabama, on or before the first day of its next session a copy of the record in said action or suit, and shall well and truly pay or caused to be paid all costs that may be awarded by the said circuit court of the United States if the said court shall hold that the said action was wrongfully or improperly removed thereto, then this obligation to be void and of no effect, otherwise to remain of full force, effect and virtue.

THE SUPREME LODGE
KNIGHTS OF PYTHIAS,
By CHAS. P. JONES,
Its Att'y-in-fact.
F. M. BILLING.
CHAS. P. JONES.

Approved this 7th day of April, 1896.

P. F. OWENS, *Clerk.*

STATE OF ALABAMA, }
Montgomery County. }

Personally appeared before me, Leon Weil, a notary public, Chas. P. Jones, who is known to me, and who being duly sworn, deposes and says that he executed the foregoing bond for and on behalf of the Supreme Lodge Knights of Pythias under and by virtue of the authority thereof.

CHAS. P. JONES.

Subscribed and sworn to before me this the 6th day of April, 1896.

LEON WEIL,
Notary Public, Mty. Co., Ala.

Continuance.

JOSEPHINE R. WITHERS
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS. } 413.

APRIL 16TH, 1896.

This day came the parties by attorneys and the cause is con-
8 tinued. But plaintiff claims, and is allowed the right at the next term of this court to contest defendant's application or right to remove the said cause to the United States court.

Order for Removal.

JOSEPHINE R. WITHERS
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS. } 413.

OCTOBER 23RD, 1896.

This cause coming on to be heard upon a petition interposed by the defendant for its removal out of this court into the circuit court

of the United States to be held at Montgomery, Alabama, and executing a bond with sureties therein as required by law, upon consideration, the court is of the opinion that the petition ought to be granted.

It is therefore considered by the court that this cause be removed to said circuit court of the United States to be held at Montgomery, Alabama, and the clerk of this court transmit a certified copy of all the papers, records and proceedings of this cause to the clerk of said court upon the payment to him of the cost in this court.

STATE OF ALABAMA, }
Hale County. }

I, P. F. Owens, clerk of the circuit court of said county, hereby certify that the above is a true and correct copy of all the papers, records and proceedings in the above-stated cause.

Given under my hand and seal this 9th day of November, 1896.

[SEAL.] P. F. OWENS,
Clerk Circuit Court, Hale County, Ala.

Filed Jan. 9, 1897.

J. W. DIMMICK, *Clerk.*

Demurrer of Defendant.

In the U. S. Circuit Court, Middle District of Alabama, at Montgomery, Ala.

JOSEPHINE R. WITHERS
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS.

9 Comes the defendant by attorney, and demurs to the complaint filed in said cause, and for grounds thereof, assigns the following:

1st. Because it is averred in said complaint that R. W. Withers complied with all legal and reasonable requirements of said corporation, but fails to state what said requirements were.

2nd. Because the averment last above quoted, is the conclusion of the pleader, and because no facts or circumstances are shown as to the requirements of said corporation.

3rd. That said complaint shows that R. W. Withers departed this life in good standing with said corporation under all the rules and reasonable regulations of the same, and it is not shown what the rules or regulations were; nor does it show what rules the pleader asserts or claims to be legal and reasonable; and what illegal or unreasonable.

4th. Because said averment is the conclusion of the pleader and not the statement of a fact.

THOS. G. & CHAS. P. JONES,
Attorneys for Defendant.

Filed June 23, 1897.

J. W. DIMMICK, *Clerk.*

Jury and Verdict.

TUESDAY, *July* 6, 1897.

Judgment.

JOSEPHINE R. WITHERS
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS.

This cause having been duly removed from the circuit court of the State of Alabama from the county of Hale in said State, the court in which the suit was commenced, to the circuit court of the United States for the southern division of the northern district of Alabama, on the ground that plaintiff and defendant were and are citizens of different States, and having by consent of the several parties thereto been transferred from said last-mentioned court to this court for trial, come the parties by their attorneys and issue being joined on the plea of the general issue and on a special plea of defendant setting up a forfeiture of the certificate or contract sued upon, as shown by written agreement of the parties filed herein, comes a jury of twelve good and lawful men, to wit: W. H. Durden, foreman, and eleven others, who upon their oaths say: "We the jury find for the plaintiff and assess her damages at three thousand three hundred and ninety-two and $\frac{54}{100}$ ($3,392.54) dollars. It is therefore considered and adjudged that the plaintiff have and recover of defendant the said sum of $3,392.54, together with the costs of this suit for which let execution issue.

Bill of Exceptions.

Agreement of counsel under which case was tried.

In the Circuit Court of the United States for the Middle District of Alabama, May Term, 1897.

SUPREME LODGE KNIGHTS OF PYTHIAS
vs.
JOSEPHINE R. WITHERS.

Be it remembered that at the May term, 1897, of the circuit court of the United States for the middle district of Alabama, the following proceedings were had in said cause:

The parties by their attorneys made and filed in open court the following agreement, under which the demurrer to the complaint was withdrawn, and under which the case was tried, and court and parties waived the filing of former pleas and replications in the case. The agreement of counsel was as follows:

"In this case it is agreed that the same shall be tried upon the complaint and upon pleas setting up the general issue and a forfeiture of the certificate sued upon, with leave to give in evidence any fact which might be specially pleaded to the cause of action set

out in the complaint, and with like leave on the part of the plaintiff to give in evidence any fact which — in rebuttal of any such plea, or in confession and avoidance thereof.

It is further agreed that if plaintiff is entitled to recover, she is entitled to recover the sum of three thousand dollars, the amount of the certificate, with interest from the 5th day of November, 1895. If the court shall be of opinion that the law upon the evidence is for the plaintiff, it shall charge the jury to find a verdict for the plaintiff for three thousand dollars, and interest from November 5th, 1895; otherwise it shall charge the jury to find for the defendant.

(Signed) ED. DE GRAFFINREID,
C. E. WALTER,
H. C. TOMPKINS, *Attorneys for Pl'ff.*
THOS. G. & CHAS. P. JONES,
Attorneys for Defendant.

11 *Agreement as to Testimony of S. W. Chadwick.*

The plaintiff then introduced a further agreement of counsel, which is in words and figures as follows, to wit:

It is admitted in this case as follows: That S. W. Chadwick, if present, would testify as follows: My name is S. W. Chadwick, and I am now and have been for more than twenty years the sec'y of section No. 432, endowment rank, Knights of Pythias of the World. Robert W. Withers was a member of said rank, and he has paid over to me regularly as secretary of said rank his dues on account of his policy No. 11072, and the money was regularly remitted to the secretary of the board of control at Chicago. The last payment that was made to me by Col. Withers was for the dues for the month of October, 1895, which money was paid to me prior to the 10th day of October, 1895. There were large numbers of men who were members of the said section, and as I did not collect from all of them their dues until the latter part of October, I did not send the money to the board of control at Chicago until the 31st day of October, 1895. Having collected by the 31st day of October all of the dues due by all of the members of the section for the month of October, I mailed in the afternoon of October 31st, 1895, to H. B. Stolte, sec'y of the board of control, Chicago, Ill., a check covering all of the amounts due by all of the members of said section for the month of October. At that time the mail in Greensboro was made up early in the evening, and when letters were placed in the post-office after the mail had been made up by the postmaster, such letters went into the mail of the next day. As sec'y of the section, I kept a set of books, and my books show and I positively recollect that I mailed the letter with a check for money on the afternoon of the 31st of October, 1895. I sent the money by a check just as I had always previously done.

It had never been the custom at my office for me to send the money off by the 20th of the month. I usually sent the money off about the last days of the month. For the previous year I had mailed to the sec'y of the board of control the dues of the section as

follows: October 27th, 1894, November 28th, 1894, December 29th, 1894, January 29th, 1895, February 27th, 1895, March 30th, 1895, April 29th, 1895, June 29th, 1895, July 8th, 1895, August 29th, 1895, September 28th, 1895, October 28th, 1895, October 31st, 1895—all of which sums were accepted by the board of control.

When the money reached Chicago after the first of the
12 month, Mr. H. B. Stolte mailed to me, as sec'y of section No. 432, a letter, a substantial copy of which is hereto attached marked Exhibit X for identification. These letters I always destroyed, and did not inform the members of the section of the receipt of them, as I knew the money had reached Chicago by the time I received the letter.

I am a banker and insurance agent.

It is admitted that no notice was ever mailed at any time by the sec'y of the board of control, or of any other member thereof, to Col. Robert W. Withers, notifying him of his suspension by reason of the failure of the sec'y of section 432 to remit the dues of the section to the board of control in time to reach the board of control on the first day of the month succeeding the month in which such dues became due. It is admitted that Robert W. Withers, named in policy No. 11072, died of an attack of cholera morbus on November 1st, 1895, and that he was taken sick and died on that day, and that proof of death has been waived by the defendant, and on the 5th day of November, 1895, defendant refused to pay the amount of the certificate, or any part of it, denying any and all liability on such certificate.

(Signed) ED. DE GRAFFINREID,
H. C. TOMPKINS,
Attorneys for Plaintiff.
THOS. G. & CHAS. P. JONES,
Attorney for Defendant.

Letter from Board of Control.

EXHIBIT X.

Office of board of control of the endowment rank, Knights of Pythias.

CHICAGO, *Nov.* 1, 1895.

S. W. Chadwick, secretary section 432, endowment rank, Knights of Pythias.

DEAR SIR AND BRO.: You are hereby notified that the above section having failed to pay the monthly payment and dues for the month of October, 1895, as required under article IV, section 6 of the general laws, the section and all members thereof stand suspended, and such members' certificates have thereby become forfeited.

Under provisions of said law, the section may regain all
13 rights as a section, and any surviving members thereof (not less than five) may regain full rights and privileges, if, within

thirty days from the date of suspension, payment of all monthly payments, assessments of dues, accrued upon said members, is made to the board of control.

Less than five members of a section so suspended may, upon the payment to the board of control, within thirty days from suspension of all accrued monthly payments, assessments or dues, and 50 cents each for a clearance card, regain membership and all rights and privileges attached thereto, whereupon clearance cards will be issued them, such member shall be held subject to all requirements governing the issue of clearance cards as provided for in article IV, section 8 of the general laws.

The board of control express the hope that the membership will avail themselves of the privileges thus afforded by law, and cause immediate payment of all arrearages to be made.

Fraternally yours,

(Signed) H. B. STOLTE,
Sec'y Board of Control.

The plaintiff then introduced the policy or certificate of membership sued on, No. 11072, which is in words and figures as follows, to wit:

No. 11072. *Certificate of Membership.* Fourth class. $3,000.

Endowment rank of the order of Knights of Pythias.

This certifies that Brother Robert W. Withers received the endowment rank of the order of Knights of Pythias in section No. 432 on March 2nd, 1883, and is a member in good standing in said rank. And in consideration of the representations and declarations made in his application, bearing date of January 1, 1883, and his absolute surrender of the certificates heretofore held by him in 1st and 2nd classes for cancellation as requested in his application for transfer to the fourth class, bearing date of August 13th, 1885, all of which is made a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said endowment rank of all monthly payments as required, and the full compliance with all the laws governing this rank, now in force, or that may hereafter be enacted, and shall be in good standing under said laws, the sum of three thousand dollars will be paid by the Supreme Lodge Knights of Pythias
14 of the World to Josephine R. Withers, wife, as directed by said brother in his application, or to such other person or persons as he may subsequently direct, by change of beneficiary, entered upon the records of the supreme secretary of the endowment rank; upon due notice and proof of death, and good standing in the rank at the time of death and surrender of this certificate.

Provided, however, that if at the time of death of said brother, one monthly payment to the endowment fund by members holding an equal amount of endowment, shall not be sufficient to pay the amount of endowment held by said brother, the benefit to be paid in case of death shall be a sum equal to one payment to the

endowment fund by each member holding an equal amount of endowment. And it is understood and agreed, that any violation of the within-mentioned conditions of the requirements of the laws in force governing this rank, shall render this certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof.

In witness whereof, we have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

(Signed) JOHN VAN VALKENBURG,
Supreme Chancellor.

Attest: R. E. COWAN,
[SEAL.] *Supreme Keeper of Records and Seal.*

Issued this 29th day of September, 1885, at Washington, District of Columbia, and registered in Book 1, folio 222.

(Signed) HALIN NELSON,
Supreme Secretary.

Indorsed: Filed June 23, 1897. J. W. Dimmick, clerk.

Section 4 of General Laws.

The plaintiff then introduced section 4, Exhibit "Marked C" of the general laws, which is in words and figures as follows, to wit:

On January 25th, 1894, defendant adopted and promulgated the following general laws: "Section 4. Monthly payments and dues of members holding certificates of endowment shall be due and payable to the secretary of section without notice, on the first day of each and every month; and a failure to make such payment on or before the tenth day of each month shall cause, from and after such date, a forfeiture of the certificate of endowment and all right, title and interest such member or his beneficiaries may have in and to the same, and membership shall cease absolutely. In case
15 of such forfeiture, membership may be regained by making application in the form prescribed for new applicants, the payment of required membership fee and surrender of the forfeited certificate. If approved by the medical examiner-in-chief and accepted by the board of control, a new certificate shall be issued and the rating shall hereafter be at the age of nearest birthday to the date of the last application."

It is agreed that said above general law has never been repealed and still exists as a law of the corporation, the defendant in this suit, and has existed as such ever since January 25th, 1894, and that the same subject to legal exception, may be had in evidence in this cause, the cause being Josephine R. Withers *vs.* Knights of Pythias of the World.

(Signed) ED. DE GRAFFINREID,
H. C. TOMPKINS,
Attorneys for Plaintiff.
THOS. G. & CHAS. P. JONES,
Attorneys for Defendant.

Indorsed: Filed June 23, 1897. J. W. Dimmick, clerk.

Article IV, General Laws Endowment Rank.

The plaintiff then introduced article IV of the general laws endowment rank Knights of Pythias of the World, and the following agreement of counsel in reference thereto:

"It is admitted, subject to legal exception, that article 4 of the general laws of the endowment rank of Knights of Pythias of the World is as follows: "Each applicant for membership in the endowment rank shall, upon completion of his application for transmission to the board of control, pay to the secretary of the section, in accordance with his age and the amount of endowment applied for, a monthly payment as provided in the following table, and, if accepted, such member shall continue to pay the same amount each month thereafter as long as he remains a member of the endowment rank, unless otherwise provided for by the Supreme Lodge or board of control of the endowment rank Knights of Pythias of the World." It is agreed that the tables shall not be set out, but that the amount to be paid by Withers according to the table was $4.90 per month.

(Signed) H. C. TOMPKINS,
ED. DE GRAFFINREID,
Attorneys for Plaintiff.
THOS. G. & CHAS. P. JONES,
Attorneys for Defendant.

16 *Agreement of Counsel.*

The defendant then introduced a further agreement of counsel, marked B, which is in words and figures as follows, to wit:

It is admitted in this case that R. W. Withers originally held certificates in the first and second class, and that said certificates were issued on an application dated January 1st, 1883, the original of which is hereto attached, and which is the application referred to in certificate No. 11072, being the certificate sued on in this case, and set out in the original complaint.

That R. W. Withers died November 1st, 1895. It is further admitted that the dues for the month of October, which were payable by said Withers by virtue of the certificates above described, were included in a check, and sent by S. W. Chadwick with his remittance, dated October 31st, 1895, which said remittance was received by the board of control on the 4th day of November, 1895. That H. B. Stolte, secretary of the board of control, on the 1st day of November, 1895, no remittance for the October dues from section 432 (of which said R. W. Withers was a member) having reached the board of control, sent S. W. Chadwick a letter, which is attached to a statement of his testimony. That on receipt of said remittance, on the 4th of November, 1895, said H. B. Stolte sent to S. W. Chadwick a receipt on a postal card, a copy of which is hereto attached. That as soon as the board of control learned of the death of said R. W. Withers, it returned to S. W. Chadwick, secre-

tary, by registered letter under date of November 5th, 1895, th amount of the October dues of said Withers, but said S. W. Chad wick returned it to the board of control, where it is now held sub ject to his order. That the following general law was adopted b the defendant in January, 1894, and has never since been repealed and is still in force:

"SEC. 6. The secretary of a section shall forward to the board o control the monthly payments and dues collected immediately afte the tenth day of each and every month.

If such payments and dues are not received by the board o control on or before the last day of the same month, the section s failing to pay, and all members thereof, shall stand suspended fron membership in the endowment rank, and their certificates and al right, title and interest therein shall be forfeited. Notice of such sus pension shall be forthwith mailed by the secretary of the board o control to the president and secretary of such section."

"Provided, that the section whose membership has forfeited thei endowment, and whose warrant has been suspended, shal
17 regain all right as a section, and any surviving member thereof (not less than five) shall regain full rights and privi leges held previous to such forfeiture, if within thirty days from th suspension of warrant, said section shall pay to the board of contro the amount of all monthly payments, assessments and dues accrue upon said members."

SEC. 10. Sections of endowment ranks shall be responsible and liable to the board of control for all moneys collected by the secre tary, or other officers, from the members for monthly payments assessments or dues not paid over to the board within the time and manner prescribed by law. Officers of sections are the agents of th members and shall in nowise be considered as the agents of th representatives of the board of control of the endowment rank or o the supreme lodge."

(Signed) H. C. TOMPKINS,
ED. DE GRAFFINREID,
Attorneys for Plaintiff.
THOS. G. & CHAS. P. JONES,
Attorneys for Defendant.

The defendant then introduced the application for membership in words and figures as follows, to wit:

Application for Membership in the Endowment Rank, Knights o Pythias.

The undersigned is desirous of becoming a member of section No. 432 of the endowment rank of the order of Knights of Pythias This application will become part of the contract, if accepted.

The following answers are to be in the handwriting of the appli cant in his own language:

I. (1) Name at full length Robert Walker Withers. (2) Resi dence, Hale county, Alabama. (3) County of ——. (4) State o

Alabama. (5) Occupation, planter. (6) Other or occasional occupations, ——.

1. (5) Describe the occupation fully.

(7) Are you married? Yes, or single, ——.

(8) Place and date of your birth. (9) Place of birth, Madison county, Alabama. (10) Year, 1834. (11) Month, September. (12) Day of month, second. (13) Age recorded from nearest birthday, 48 yrs.

II. (1) Is there any insurance or endowment on your life? Ans. None. (3) If so, state in what number of certificate, and
18 give the amount. (4) Ans. ——. Has any life insurance company or endowment order ever declined to grant insurance on your life? (6) Ans. Never. If so, what company or order, and how long since? (7) State particulars concerning same. (8) Ans. ——. 11. (1) If in E. R., give the number of certificate.

III. (1) Has any opinion ever been sought for, or any consultation held with any officer of any life insurance company or order, or any physician or surgeon, as to whether your life was safely insurable? (2) Never. (3) If so, state what and give amount. (State particulars.) (4) Ans. ——. (5) If yes, was any decision or opinion given that you were, or that you were not, safely insurable? (State particulars, time and date.) (6) Ans. ——.

IV. (1) Have you ever been abroad for the benefit of your health, upon the advice of your physicians? (2) Ans. Never. (3) If so, state when, where and for what trouble or what disease. (State full particulars regarding date and duration.) (4) Ans. ——. (5) Are you now in the daily habit of using intoxicating liquors? If so, how many times daily? (6) Ans. ——. This question must not be answered by words moderately or "temperately," but a full and explicit answer must be given.

VI. (1) Do you use morphine, opium, or other sedatives in any form? (2) No. (3) If so, what occasions their use and how often do you use them? (4) Ans. ——. (5) Is it upon the advice of a physician? (6) Ans. ——.

VII. (1) Have you ever had, during the last seven years, any sickness or disease necessitating the employment of a physician? (State particulars fully.) (2) One attack of billiousness two years since, lasting a few hours.

VIII. (1) What ages did or have your grandparents attained? (2) Living, paternal, ——. Paternal 70 ——. Maternal, ——. (3) Dead, maternal, 69. (4) What parents do you most resemble? (5) Ans. Blended. VIII to XII. In stating the cause of death avoid such expressions as "general debility," change of life, "fever," exposure "nothing hereditary," or any such indefinite terms.

IX. (1) Are your parents living? Give their age and state of health. Age, if living. (2) Father. (6) Mother, 72. State of health when last heard from. (3) ——. (7) Good. Age at death. (4) 55. (8) ——. Cause of death. (5) Chronic gastritis. State definitely cause of death.

How many brothers have you had? No. (6) Age, if living. 2.42 & 29. State of health when last heard from. 3.4 died infants.

Age at death. (4) Unknown. Cause of death. (5) Unknown. State definitely cause of death.

19 How many sisters have you had? (4) (2) Ranging from 30 to 40 yrs. (3) ——. (4) ——. (5) ——.

(XII.) (1) Have either of your grandparents, parents, uncle or aunts, brothers or sisters, ever had consumption, scrofula, insanity or any hereditary disease? (2) Ans. None. If the expression "childbirth" is used, be particular to state how long after delivery, and also whether there *was* any symptoms of chest troubles.

(XIII.) (1) What class or classes do you desire to enter? State plainly, "first," "second" or "third," or "first and second?" First and second.

To whom do you wish the benefit made payable, and what relationship to you? Write the name and address plainly, giving State, county and city or town. My wife, Josephine P. Withers, Greensboro, Hale county, Ala.

Please read carefully the following declaration and agreement and observe its import:

I declare that I am not now a member of the endowment rank, have not been rejected within the past six months, and am not now under suspension. I declare, furthermore, that all of the above statements are in my handwriting, and are true to the best of my knowledge and belief, and that I have not concealed or omitted to state anything regarding my health, past or present, effecting the expectancy of my life, and that I hereby consent and agree that any untrue statement made in this application, or to the medical examiner, or any concealment of facts touching my health or expectancy of life or suspension from the rank and order, or voluntarily severing my connection with the order, shall work a forfeiture *to* all my rights, the rights of my heirs, and beneficiaries to all benefits and privileges accruing to members of this rank.

I hereby agree that I will punctually pay all dues and assessments to which I may become liable, and that I will be governed, and this contract shall be controlled, by all the laws, rules and regulations of the order governing this rank, now in force, or that may hereafter be enacted, or submit to the penalties therein contained. To all of which I willingly and freely subscribe.

Dated at Greensboro, Ala., this the first day of January, 1883.

(Signed) ROBERT WALKER WITHERS,
Member of Eureka Lodge No. 29, Knights of Pythias,
City of Greensboro, State of Alabama.

March 2, '83.

These questions are to be asked and the answers written by the medical examiner only, and in his handwriting, no third per-
20 son to be present at the examination, nor should the medical examiner frame any answers to the questions propounded. The replies to each and every question to be plainly expressed.

XIV. (1) Are you now in good health? (2) Yes. (3) Do you ordinarily enjoy good health? (4) Ans. Yes.

XV. (1) Have you ever been predisposed to, or had any of the following diseases or infirmities? (2) Yes. (3) Have you either now? (4) Has piles slightly.

XV. Answer "yes" or "no" as the case may be, opposite each. If you have had either state how long since, giving full particulars. 1. Apoplexy. No. 2. Asthma. No. 3. Bronchitis or habitual cough. No. 4. Cancer or any tumor. No. 5. Consumption. No. 6. Colic. No. 7. Constipation. No. 8. Disease of the brain. No. 9. Disease of the bowels. No. 10. Disease of the heart. No. 11. Disease of the liver. No. 12. Disease of the bladder. Ans. No. 13. Disease of the kidneys. No. 14. Dizziness. No. 15. Discharges from ear. No. 16. Dropsy. No. 17. Diarrhœa. No. 18. Delirium tremens. No. 19. Dysentery. No. 20. Dyspepsia. No. 21. Erysipelas. No. 22. Eruption or disease of the skin. No. 23. Fevers of any kind. Yes. 24. Fistula in ano. No. 25. Fits or convulsions. No. 26. Frequent desire to urinate. No. 27. General debility. No. 28. Gout. No. 29. Gravel. No. 30. Headache, frequent or severe. No. 31. Insanity. No. 32. Jaundice. No. 33. Lumps or swelling in any part of the body. No. 34. Pain in back. Yes. 35. Pneumonia. No. 36. Pleurisy. No. 37. Paralysis. No. 38. Piles. Yes. 39. Rheumatism. No. 40. Rupture. No. 41. Smallpox. No. 42. Spitting or raising of blood or other hemorrhages. No. 43. Swelling of feet, hands or eyelids. No. 44. Stricture of uret-ra. No. 45. Syphilis or gonoerhœa. No. 46. Scrofula. No. 47. Varicose veins. No. 48. Ulcers or open sores. No.

Answer each question briefly but completely.

XVI. (1) Have you ever had or have you now any other disease or infirmity than above mentioned? (2) No. (3) Have you ever met with any accident or personal injury, or undergone any surgical operation? (State particulars.) (4) Was operated upon for piles in 1865.

XVII. (1) Have you been successfully vaccinated? (2) Yes. (3) When were you last vaccinated? (4) Dec., 1881.

XVIII. (1) Are you aware of anything regarding your health, habits, circumstances, or family history, not already stated, that should be known, in order to fairly estimate the risk upon your life? (2) Ans. No. (3) Have you been liable to cough, difficulty or breathing, habitual expectoration, pain in the chest, or any other pulmonary symptoms, or palpitation of the heart? (If so, state particulars.) (4) Ans. No.

21 XIX. (1) Are you willing that your family physician should, in the interest of the endowment rank, give it all the information in his power regarding your physical condition, habits and general health? (2) Ans. Yes. (3) Give name and address of your family physician. (4) Ans. F. M. Peterson, Greensboro, Hale county, Ala.

I hereby further declare that I have understood all the above questions put to me by the medical examiner, and the answers

thereto, and that the same are warranted by me to be true, and that I am the same person described above.

ROBERT WALKER WITHERS,
Applicant for Membership in the Endowment Rank.

Witness:
R. INGE, M. D.

Medical Examiner's Certificate.

(Special instructions to medical examiners.)

It is expected that the medical examiner will familiarize himself with the "rules to be observed by the medical examiners of the E. R. K. of P., in the examination of applications for membership," in whom the highest interest of the endowment rank are entrusted, and it is also expected that he will communicate directly with the medical examiner-in-chief any additional information bearing on this case. Such communications will be held strictly confidential.

XX. (1) Have you carefully questioned the applicant concerning the matters mentioned in questions I to XIX; and are statements made apparently correct? (2) Ans. Yes. (3) What is your opinion of the influence of his occupation on the risk? (4) Ans. Beneficial to the risk.

XXI. (1) Height, 5 feet, 10 inches. (2) Weight, 160 pounds. (3) Number of inches around the chest under the vest, on full inspiration 38 inches. On deep expiration 35 inches. (4) Girt of waist, 34 inches. (5) Figure. Good. (6) General appearance. Healthful.

XXII. (1) What is your opinion in regard to the health of his place of business, or residence? (2) Ans. Good. (3) What is your opinion in regard to any former injury or sickness? (4) Ans. No traces of disease left.

XXIII. (1) Has the applicant the appearance of one addicted to the use of intoxicating beverages? (2) Ans. No. (3) If so, to what extent? (State fully and explicitly all you know regarding this question.) (4) ——.

XXIV. Is there anything in his speech, looks, gait or manner of conducting himself, that would lead you to suspect that the
22 applicant has any disease, organic or functional, of the brain, or any other portion of his nervous system, or any predisposition thereto? (2) Ans. No.

XXV. (1) Has the applicant paralysis, cramps, tremor, atrophy, or rigidity, in any portion of his muscular system? (2) Ans. No. (3) Is his gait firm and elastic? (4) Ans. Yes.

XXVI. (1) Upon auscultation and percussion is the respiratory murmur clear and distinct over both lungs? (2) Ans. Yes. (3) Is the character of the heart's action uniform, free and steady? (4) Ans. Yes. (5) Are its sounds regular and normal? (6) Ans. Yes. (7) Are the respirations full, easy and regular? (8) Ans. Yes. (9) Number of respirations per minute? (10) Ans. 17. (11) Rate of pulse while standing? (12) Ans. 85 per minute. (13) Rate of

pulse while sitting? (14) Ans. 80 per minute. (15) Does it intermit or become unsteady? (16) Ans. No. Or irregular (Ans.) ——. (17) Are there any indications whatever of disease of the organs of respiration? (18) Ans. No. (19) Are there any indications whatever of disease of the heart or blood-vessels? (20) Ans. No.

XXVII. (1) Is the applicant deaf, lame, or has he any natural or other deformity? (2) Ans. No. (3) Is he ruptured? (4) Ans. No. (5) Is it single or double? (6) Ans. ——. (7) Is it reducible or not. (8) Ans. ——. (9) Is a suitable truss worn? (10) Ans. ——. (11) If ruptured, does he agree to habitually wear a suitable truss? (12) Ans. ——.

XXVIII. (1) Are the functions of the abdominal and urinary organs in a healthy condition? (2) Ans. Yes. (3) Are there are any indications, whatsoever, that the applicant is not entirely well and in good health? (4) Ans. No. (5) Do you consider the party in all respects safely assurable? (6) Ans. Yes. (7) Do you recommend him for membership? (8) I do.

I hereby declare that I have this day carefully examined the above-named applicant, and that I have written and attentively considered the foregoing statement, made by him, and witnessed his writing the signature as appears upon the reverse of this document. Dated at Greensboro, Ala., this first day of Jan., 1893.

(Signed) R. INGE, M. D.,
Medical Examiner, Section No. 432, Graduate of Univ. of Va. Medical College, Charlottesville, Va., Class of 1870, Va., and Univ. of New York, New York, 1871, N. Y.

Certificate of Lodge.

This to certify that brother knight, Rob't W. Withers, is a member of the knight's rank of Eureka lodge No. 29, of the grand
23 jurisdiction of Alabama, city or town of Greensboro, Ala., in good standing, and that his dues are paid to Jan'y 1st, 1883.

(Signed) WM. H. SANBORN,
Master of Finance.

Attest: E. T. HUTCHINSON,
[SEAL.] *Keeper of Records and Seal.*

Report of Committee on Character.

To the officers and members of section No. 432, E. R., K. of P.:

We, your committee, appointed to examine into the character of Bro. Rob't W. Withers, who desires to become a member of this rank, beg leave to report, that he is of good moral character, and his habits of life are correct and temperate, and recommend that he be duly admitted.

(Signed) A. B. LOVEMAN,
T. E. COWAN,
S. W. CHADWICK,
Committee.

Balloted for and accepted Jan'y 12, 1883.

(Signed) WM. H. SANBORN,
Secretary and Treasurer Section No. 432.

Endorsements: Application No. 11072 of W. R. Withers. To section No. 432. Both. Endowment rank. K. of P. Certificate issued M'ch 9, 1883. First class No. 15013. Second class No. 20136. Approved February 14th, 1883. A. R. Booth, M. D., medical examiner-in-chief. Received Mar. 9, 1883. Endowment rank, K. of P.

Instructions.

All blanks on this part of the application are to be filled by the S. M. of E. and medical examiner-in-chief. Secretary and treasurer of section will see that all other blanks are properly filled and all questions are answered, before forwarding the application.

Endorsement by clerk: Filed June 23, 1897. J. W. Dimmick, clerk.

Remittance Envelope.

Defendant then introduced one envelope marked F, in which remittance sheet was enclosed, with a U. S. stamp on it, and on which were the following words and figures:

Postmark: Greensboro, Ala., Nov. 1, 1895. Endowment rank, Knights of Pythias. If not called for in ten days, return to S. W. Chadwick, banker, Greensboro, Ala. This envelope bore the
24 following directions: Board of control, endowment rank, Knights of Pythias, rooms 43 to 49, Commerce building, 14 & 16 Pacific Ave., Chicago, Illinois.

Endorsement of clerk: Filed June 23, 1897. J. W. Dimmick, clerk.

Remittance Sheet.

The defendant then introduced remittance sheet in words and figures as follows, to wit:

K. of P. Endowment rank, K. of P., Nov. 4, 1895.

Section No. 432, endowment rank, K. of P.

Remittance Blank.

Payment for month of October, 1895.

GREENSBORO, ALA., *Oct.* 31*st*, 1895.

Board of control, endowment rank, Knights of Pythias, rooms 43 to 49, Commerce building, Chicago, Ill.:

Enclosed please find cashier's draft for $113.30.

	Number of members.	Amount of endowment.	Monthly payments.	Monthly dues.
Paid as per last report.....	31	9,200*0*	$108.70	4.60
Admitted since..... (State names, amounts, etc., on back of blank.)				
Total to be accounted for.. (State names, amounts, etc., on back of blank.)	31	9,200	$108.70	4.60
Deductions since last report.....				
Due as per remittance.....	31	9,200	$108.70	4.60

Fraternally yours,

[SEAL.]

S. W. CHADWICK,
Secretary Section No. 432.

25 Secretaries will observe the following:

This blank must be correctly filled out, seal of section impressed, and forwarded to the office of the board of control, endowment rank, Knights of Pythias, accompanied by the exact amount due from the section for the monthly payment and monthly instalment of dues remitted. If incorrect the board of control reserves the right to return the remittance at the risk of the section. But one monthly payment and monthly instalment of dues must be shown on each blank. The amount due and money remitted must agree.

Secretaries are requested to forward remittances by post-office money order, express money order, or by bank draft on New York, Chicago or St. Louis, drafts to be made payable to the secretary of the section, and indorsed by him officially, payable to board of control endowment rank, K. of P.

If remittance is made by bank draft it is understood that the credit given the section on day of its receipt is subject to the payment of the draft by the bank upon which it is drawn.

If remittance is made by post-office money order, advise payment to board of control, endowment rank, K of P. This is necessary to collect the money. Under no circumstances will individual checks be received. The remittance will positively be returned if made in that manner.

Instructions to the Secretary.

1. The blank must always be used in remitting monthly payments and dues. Your money will not be applied otherwise.

2. In forfeiture of certificate, give cause, whether for non-payment of monthly payments and dues, or on account of suspension from lodge.

3. If a member wishes to resign, all monthly payments and dues prior to the date of resignation must be paid. If he fails to pay the monthly payments and dues, his membership and certificate must be reported as forfeited.

4. A member taking a clearance card, must not be reported to the board of control as withdrawn until the secretary has been notified that the card has been deposited in another section. Until then, he must be treated as a member of the section issuing the card, and if he fails to pay monthly payments and dues, as required under the law, he forfeits his membership and certificate.

5. Members changing occupation, by which monthly payments *is* increased or decreased, are to be reported here, showing the
26 amount of increase or decrease, only, which must be added to or deducted from the face of the blank. The additional or reduced payment shall begin with the month next following such change of occupation.

Do not repeat names of members previously reported, but show only "additional" and "deductions" since last report.

Statement of Additions Liable for This Payment.

The blank must be filled by the secretary, otherwise the same will be returned.

Certificate No. —, name —— ——, age —, amount of endowment —, monthly payment —, m'thly dues —. State how admitted, if new member, readmission, or by card, from what section; also additional payment by reason of increase or change of occupation.

Statement of Deductions Since Last Report.

This blank must be filled by the secretary, otherwise no deductions will be allowed on this assessment.

Certificate No. —, name —— ——, age —, amount of endowment —, monthly payment, —, m'thly dues —. Give cause of deduction, whether by forfeiture, withdrawn by card, resignation, death or change of occupation. If withdrawn by card, give section admitted to.

Clerk's indorsement: Filed June 23, 1897. J. W. Dimmick, clerk.

This was all the evidence. Thereupon, the court being of the opinion that the defendant was liable, charged the jury, as it was agreed in event the court so found, to find a verdict for the plaintiff for the sum of three thousand dollars, with interest from the 5th of November, 1895, and the defendant then and there duly excepted to the giving of said charge before the jury retired. And defendant, thereupon, requested the court in writing, to charge the jury, "if they believed the evidence, they must find for the defendant," which charge was asked in writing; and the court refused to give said charge, and the defendant then and there excepted to the refusal to give said charge, before the jury retired. And the defend-
ant now tenders this, as its bill of exceptions, which is signed,
27 sealed and allowed as such by the Hon. John Bruce, presiding judge of said court, in term time.

Dec. 6, '97.

JOHN BRUCE, *Judge.*

We agree *that* the above bill of exceptions and that the same be signed by the presiding judge of term time.

ED. DE GRAFFENREID,
TOMPKINS & TROY,
Att'ys for Pl'ff.

Filed Dec. 6, 1897.

J. W. DIMMICK, *Clerk.*

Opinion of the Court.

In the Circuit Court of the United States for the Middle District of Alabama, May Term, 1897.

JOSEPHINE R. WITHERS
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS.

BRUCE, *J.:*

This cause is submitted to the court upon an agreed statement of facts set out in the record.

The suit is upon a policy of insurance by the beneficiary named in the policy, and the defence is that the policy was forfeited at and before the time of bringing the suit.

Withers, the member whose right is here involved, was a member of the endowment *b*ank, section No. 432, at Greensboro, in the State of Alabama.

He had duly paid all his assessments and dues, including the monthly dues for the month of October, 1895, and these payments were made to the secretary in his section, one Chadwick, who testifies: "The last payment that was paid to me by Col. Withers was for the dues for the month of October, 1895, which money was paid to me prior to the 10th of October, 1895."

The secretary, Chadwick, further testifies: "There were a large number of men who were members of said section and as I did not collect from all of them their dues until the latter part of October I did not send the money to the board of control, at Chicago, until the 31st day of October, 1895. Having collected by the 31st day of October all of the dues due by all the members of the section for the month of October, I mailed in the afternoon of October 31, 1895, to H. B. Stolte, secretary of the board of control, Chicago, Ill., a check covering all the amounts due by all the members of said section for the month of October." * * *

28 "I sent the money by a check just as I had always previously done." * * * "When the money reached Chicago, after the first of the month, Mr. H. B. Stolte mailed to me, as secretary of section 432, a letter, a substantial copy is hereto attached. These letters I always destroyed and did not inform the members of the section of the receipt of them as I knew the money had reached Chicago by the time I received the letter."

It appears the money did not reach the board of control until the

4th of November and Robert W. Withers died on the 1st day of that month.

The proposition of the defendant company is that this policy lapsed and became forfeited because the monthly dues of the insured for October, 1895, *was* not paid to the board of control, before the 1st of November, in Chicago. A brief examination of the law and scheme of insurance of the defendant company is necessary at this point. Section 4 provides: "Monthly payments and dues of members holding certificates of endowment shall be due and payable to the secretary of the section without notice on the first day of each and every month." * * *

SECTION 6. "The secretary of a section shall forward to the board of control, the monthly payments and dues collected, immediately after the tenth day of each and every month.

If such payments and dues are not received by the board of control on or before the last of the same month, the section so failing to pay, and all members thereof, shall stand suspended from membership in the endowment *b*ank, and their certificates, and all right, title and interest therein shall be forfeited. Notice of such suspension shall be forthwith mailed by the secretary of the board of control to the president and secretary of such section."

"Provided, that the section whose membership has forfeited their endowment, and whose warrant has been suspended, shall regain all rights as a section, and any surviving members thereof (not less than five), shall regain full rights and provisions held previous to such forfeiture, if within thirty days from the suspension of warrant, said section shall pay to the board of control the amount of all monthly payments, assessments or dues accrued upon said members."

"SECTION 10. Sections of the endowment ranks shall be responsible and liable to the board of control for all moneys collected by the secretary, or other officers, from the members for monthly payments, assessments or dues not paid over to the board within the time and manner prescribed by law. Officers of sections are the agents of the members and shall in nowise be considered as the agents or the representatives of the board of control of the endowment rank or of the supreme lodge."

29 Without discussing the effect of sec. 10, to which reference will presently be made, it is very clear that under sections 4 and 6 the dues of the members were to be paid to the secretary of the section, and by sec. 6 it is made his duty to forward to the board the monthly payments and dues collected, so that the local secretary whether he is in any sense to be considered the agent of the supreme lodge or not, he is to collect the dues and forward to the board of control and this seems to have been the law of the organization prior to January, 1894, when sections 6 and 10 seem to have been adopted, though, it may not be entirely clear what change was intended to be made by the new rules.

The letter of the rule is if such payments are not received by the board of control on or before the last of the same month the section

so failing to pay and all members thereof shall stand suspended from membership in the endowment rank.

We find the dues for October paid promptly by the insured Withers to the local secretary of the section, and we find him charged with the duty of forwarding the same to the board of control at Chicago, and he testifies he did it, and mailed it properly addressed on the last day of October, 1895.

But it is insisted that the money must be paid to, or perhaps it should be said it should reach, the board before the last day of October which it could not do when mailed at Greensboro on the last day of the month.

But if the money was put in the mail as testified, it was put there for transmission; and forward is the word used in the rule, and from the language used and the course of the business can any doubt exist as to the contemplation of the parties at the time as to the means by which the money was to be forwarded.

Whose money was it when mailed under seal and properly addressed, not as to whose risk it was until received by the board of control, but whose money was it, and when placed there was it not payment within the meaning of this order?

This is not the case of a debtor seeking his creditor to pay his debt—here was a course of business, a handling of trust funds by the local officer. The rule does not say that the money shall be paid in person by the local section through its officer to the officer of the board of control in Chicago, but general words are used and the argument proceeds rather upon a construction of the words used than upon the words themselves.

Forfeitures must be clear and courts do not favor them. In this case there has been no default. The insured paid his monthly dues, but by the scheme of insurance of the defendant company the failure of the secretary of the local section to have the money reach the board of control before the last of October is a default which imputed to the section and to every member of the section of the endowment rank, and without notice to the insured other than the notice to the secretary of the section, it is insisted that this is a case for a forfeiture of vested rights. I think that the court cannot so hold upon the words of the insurance law itself and if that rests in doubt then the operation of the rule as claimed would seem to be obnoxious to that fundamental principle of the law which forbids the taking of life, liberty, or property without due process of law. Again, can this scheme of insurance shown in the rules and law of the defendant be sustained upon sound legal principles? When the money for the monthly dues was received by the board of control in Chicago a receipt signed by H. R. Stolte, secretary board of control, of the following purport was recieved by secretary, Chadwick, of the local section: "Received in payment of monthly dues for October, 1895, on condition that all members from whom above payment is made were living at the date of this receipt," which is November 4, 1895. It was said in the argument, in reply to the proposition insisted upon that the defendant company had and retained the money and was, therefore, not in a position to

resist the payment of the loss, that this was but a conditional receipt, or receipt upon condition, for the money, and that may have been an answer to the proposition presented in behalf of the plaintiff herein, but, apart from that, here is a scheme of insurance which provides in case of forfeiture a way of recovery for surviving members, but if the member dies, as in this case, between the time that the dues are mailed for transmission to the board of control at a distant point, in this case Chicago, Illinois, and its receipt by the board of control there is no means by which his representative in interest or the beneficiary in the policy can be restored from the penalty of the forfeiture. Policies of insurance are taken out and the whole scheme of insurance contemplates that it is not for the benefit of the assured, but for the benefit of those dependant upon him, and if you eliminate this element from it life insurance as a system would be deprived of the main reason by which it has won its way to favor. And yet here the survivor can be relieved from the forfeiture, and is relieved, "if within thirty days from the suspension of warrant said section shall pay to the board of control the amount of all monthly payments, assessments or dues accrued upon said members," but he who dies, as stated, however prompt he may have been in payment of dues, and though no personal default can be attributed to him, still his policy is forfeited and his beneficiary is without relief or any means by which he can save himself.

Again, what does section 10 mean, and is it a clear-cut
31 proposition putting the policy-holder upon notice not only that he is to pay his dues promptly or suffer the penalty of the forfeiture if he does not, but that he is also made responsible with the other members of his section for all the dues due to grand lodge, and is made responsible for the failure of the local secretary for his failure to forward the dues.

What is the significance of the words in section 10, "Officers of sections are the agents of the members and shall in nowise be considered as the agent or the representative of the board of control of the endowment rank or of the supreme lodge."

In the face of these rules the policy-holder will perhaps find that his responsibility was not meant by the prompt payment of all dues, but other responsibilities are charged upon him, and will the courts maintain forfeitures where there is no personal default chargeable to the policy-holder but only such as is made to fall upon the section in its aggregate capacity.

Among the authories cited is the case of Campbell *vs.* Knights of Pythias, which is perhaps the strongest case cited in behalf of the defendant company, and yet the concluding sentence in that opinion shows that it is not the case that we are dealing with.

The case at bar is an instance of that kind and the case is at least not entirely in point.

The court finds for the plaintiff and the judgment will be entered as upon a verdict of a jury.

Order Allowing Appeal.

In the Circuit Court of the United States for the Middle District of Alabama. At Law.

JOSEPHINE R. WITHERS
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS.

The defendants in the above-stated cause having given bond and security as required by law, and filed with the clerk of this court an assignment of errors, it is ordered that the writ of error prayed in the above petition, be and the same is hereby allowed.

JOHN BRUCE, *Judge.*

Dec., 6, '97.

Filed Dec. 6, 1897. J. W. Dimmick, clerk.

32 *Petition for Writ of Error and for Approval of Supersedeas Bond.*

In the Circuit Court of the United States for the Middle District of Alabama. At Law.

JOSEPHINE R. WITHERS
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS.

To the Hon. John Bruce, one of the judges of said court, in vacation:

The said Supreme Lodge Knights of Pythias, respectfully shows unto your honor, that in the above-entitled cause, on, to wit: the 6th day of July, 1897, at a regular term of said court, a judgment was rendered against the said Supreme Lodge Knights of Pythias for the sum of three thousand dollars three hundred and ninety-two $\frac{54}{100}$ dollars, as damages, and the costs in that behalf sustained in favor of the said plaintiff; that said defendants hereby present a supersedeas bond as required by law (the amount of which said bond has been fixed by agreement between the defendant and the plaintiff herein) and filed herewith an assignment of errors.

Wherefore, the said defendants pray that said supersedeas bond may be approved and that a writ of error may be allowed to them from said judgment to the United States circuit court of appeals for the fifth circuit, and that a transcript of the record and proceedings and papers upon which said judgment was rendered, duly authenticated, may be sent to the said United States circuit court of appeals, for said fifth circuit.

THOS. G. & CHAS. P. JONES,
Attorneys for Defendants.

Filed Dec. 6, 1897.

J. W. DIMMICK, *Clerk.*

Assignment of Errors.

In the Circuit Court of the United States for the Middle District of Alabama. At Law.

JOSEPHINE R. WITHERS
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS.

And now comes the said The Supreme Lodge Knights of
33 Pythias, by Thos. G. and Chas. P. Jones, their attorneys of record and say that in the record and proceedings in the above cause, manifest error has intervened to their injury, and they assign the following as grounds of error:

First. The court erred in instructing the jury "to find a verdict for the plaintiff with interest from the 5th day of November, 1895."

Second. The court erred in refusing to instruct the jury at the instance of the defendant, as follows: "If they believe the evidence they must find for the defendant."

THOS. G. & CHAS. P. JONES,
Att'ys for Defendant.

Filed Dec. 6, 1897.

J. W. DIMMICK, *Clerk.*

Writ of Error and Supersedeas Bond.

In the Circuit Court of the United States for the Middle District of Alabama. At Law.

JOSEPHINE R. WITHERS
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS.

Know all men by these presents, that we, the Supreme Lodge Knights of Pythias, as principal, Edward A. Graham, Wade A. McBryde and Jacob Greil are held and firmly bound unto Josephine R. Withers in the full and just sum of forty-five hundred ($4,500.00) dollars to be paid to said Josephine R. Withers, her certain attorney, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals, and dated this 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas, at a circuit court of the United States for the middle district of Alabama, in a suit depending in said court between Josephine R. Withers and the Supreme Lodge Knights of Pythias, a judgment was rendered against said Supreme Lodge Knights of Pythias and the said Supreme Lodge Knights of Pythias having obtained a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to said Josephine R. Withers, citing and

admonishing her to appear before the circuit court of ap-
34 peals for the fifth circuit to be holden at New Orleans, Louisiana, within thirty days from the date thereof.

The condition of the above obligation is such, that if the said Supreme Lodge Knights of Pythias shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else, to be and remain in full force and virtue.

SUPREME LODGE KNIGHTS OF PYTHIAS,
By THOS. G. & CHAS. P. JONES, *Its Att'ys.*
JACOB GREIL.
WADE A. McBRYDE.
EDWARD A. GRAHAM.

Approved.
JOHN BRUCE, *Judge.*

Dec. 6, '97.

Filed Dec. 6, 1897.

J. W. DIMMICK, *Clerk.*

Citation.

THE UNITED STATES OF AMERICA:

The President of the United States to Josephine R. Withers:

Your are hereby cited to be and appear before the United States circuit court of appeals, for the fifth circuit, at New Orleans, Louisiana, within thirty days from the date hereof, pursuant to an order of appeal granted and filed in the clerk's office of the circuit court of the United States for the middle district of Alabama, wherein The Supreme Lodge Knights of Pythias are appellants and you are appellee, to show cause, if any, why the decree rendered against the appellant as in said order of appeals mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the hand of the Honorable John Bruce, judge of the district court of the United States, this 22nd day of December, in the year of our Lord, one thousand eight hundred and ninety-seven.

[SEAL.] JOHN BRUCE, *Judge.*

Service of the within citation is hereby accepted and copy waived Dec. 22nd, 1897.

TOMPKINS & TROY,
Att'ys for Def't in Error.

35 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
Middle District of Alabama, } *ss:*

I, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, hereby certify that the foregoing

pages numbered from one to —, inclusive, contain a full, true and complete transcript of the record and proceedings in a cause lately depending in said court, wherein Josephine R. Withers was plaintiff, and The Supreme Lodge Knights of Pythias, defendant, as the same appears of record and on file in my office as such clerk.

In testimony whereof, I have hereunto set my hand and caused the seal of said court to be affixed at Montgomery, in said district, this the 23rd day of August, A. D. 1897.

[SEAL.] J. W. DIMMICK,
Clerk U. S. Circuit Court, Mid. Dist. of Alabama.

36 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1897.

TUESDAY, *May* 17, 1898.

(*Extract from Minutes.*)

SUPREME LODGE OF THE KNIGHTS OF PYTHIAS
vs.
JOSEPHINE R. WITHERS. } No. 666.

Ordered that the Honorable Charles Parlange, United States district judge for the eastern district of Louisiana, be, and he is hereby, designated to sit as one of the judges of this court on the hearing and determination of this cause.

Endorsed: Filed May 18, 1898. J. M. McKee, clerk.

Agreement as to Record.

U. S. Circuit Court of Appeals, 5th Circuit.

SUPREME LODGE OF THE KNIGHTS OF PYTHIAS, Plaintiff in Error,
vs.
JOSEPHINE R. WITHERS, Defendant in Error. } No. 666.

Error to U. S. circuit court, middle district of Alabama.

In this cause it is agreed that the postal card referred to in the agreement of counsel filed in this cause in the court below, set out on pages 16 and 17 of the printed transcript of said cause, was in words and figures as follows:

"Endowment rank, Knights of Pythias. Office board of control. Endowment rank, K. of P. H. B. Stolte, secretary. Chicago, Nov. 4th, 1895. Received of section No. 432 one hundred and thirteen and $\frac{30}{100}$ dollars, in payment of monthly payment and dues for October, 1895, on condition that all members for whom above payment is made were living at date of this receipt. H. B. Stolte, secretary board of control."

37 In the center was stamped the seal of such board of control.

The same was addressed to S. W. Chadwick, Greensboro, Alabama.

It is further agreed that the said postal having been omitted from the record made out by the clerk in this case, that this agreement may be inserted in said record and considered and treated as a part of the same, and that in deciding said case the court shall consider this agreement a part and parcel of the record thereof.

Witness our hands this 17th day of May, 1898.

THOS. G. & CHAS. P. JONES,
Att'ys for Pl'ff in Error.
H. C. TOMPKINS,
ED. DE GRAFFENREID,
C. E. WALLER,
Att'ys for Def't in Error.

November Term, 1897.

TUESDAY, *May* 17, 1898.

(*Extract from Minutes.*)

SUPREME LODGE OF THE KNIGHTS OF PYTHIAS
vs.
JOSEPHINE R. WITHERS. } No. 666.

This cause was regularly called this day and was submitted to the court upon briefs of counsel heretofore filed.

38 November Term, 1897.

TUESDAY, *May* 24, 1898.

(*Extract from Minutes.*)

SUPREME LODGE OF THE KNIGHTS OF PYTHIAS
vs.
JOSEPHINE R. WITHERS. } No. 666.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the middle district of Alabama, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiff in error, The Supreme Lodge of the Knights of Pythias, and the sureties on the writ of error bond herein, Edward A. Graham, Wade A. McBryde, and Jacob Greil, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

Opinion.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1897.

Filed May 24, 1898.

SUPREME LODGE OF THE KNIGHTS OF PYTHIAS *vs.* JOSEPHINE R. WITHERS. } No. 666.

Error to the United States circuit court, middle district of Alabama.

39 Before Pardee and McCormick, circuit judges, and Parlange, district judge.

By the COURT:

By agreement this case was practically tried in the court below by the judge upon an agreed state of facts. The judge rendered an elaborate opinion on the law of the case as applicable to the facts. The assignments of error are (1) that the court erred in instructing the jury to find a verdict for the plaintiff, with interest from the 5th day of November, 1895; (2) the court erred in refusing to instruct the jury at the instance of the defendant as follows: "If they believed the evidence they must find for the defendant."

These assignments of error amount to no more than the complaint that the judge erred in deciding the case. Counsel for plaintiff in error in their brief specifically point out the errors of law of which they complain. It would seem that they ought to have complied with our rule XI with regard to the assignment of errors. As there is no plain error apparent of record, we might well dismiss this writ of error upon this ground.

Among other matters of law the trial judge held that there had been no forfeiture of Withers' insurance, because Withers had promptly paid his monthly premium, and that this payment, with the payments of other members of the section and according to the course of dealing between the secretary of the section and the board of control, had been deposited in the post-office on the last day of the month of October, 1895. We concur with this finding.

Notwithstanding the provision in section 10 of the general laws, that the officers of sections are the agents of the members and shall in nowise be considered as the agents of the representatives of the board of control of the endowment rank or of the supreme lodge, we are of opinion that the secretary of the section was in fact the agent of the board of control to receive and forward the dues paid by the individual members—Whiteside *v.* Supreme Conclave, &c., 82
40 F. R., 275; Knights of Pythias *v.* Bridges, 39 S. W., 333, and see Insurance Co. *v.* Wilkinson, 13 Wall., 222, 234—and that when payment had been made by the insured under section 4 of the general laws to the secretary of the section the money so paid belonged to the board of control. Under a fair construction of sec-

tion 6 and of section 10 of the general laws, when the secretary of the section deposited in the post-office at Greensboro the moneys collected as the monthly payments and dues of the individual members of the section, and in this followed a long course of business, the said payments and dues were then and there received by the board of control—Buell *v.* Chapin, 99 Mass., 594; Gurney *v.* Howe, 9 Gray, 404—and as in this case the admitted facts show that the payments and dues were deposited by Chadwick, the secretary of the section, in the post-office at Greensboro on the 31st day of October, 1895, there was no forfeiture under section 6 of the general laws.

Campbell *v.* Supreme Lodge Knights of Pythias, 168 Mass., 397, does not conflict with this view of the case.

Other questions argued need not be considered.

The judgment of the circuit court is affirmed.

41 *Petition for Writ of Error.*

To the Honorable Edward Douglass White, justice of the Supreme Court of the United States:

The petitioner, The Supreme Lodge Knights of Pythias, respectfully represents and shows unto your honor that at the time of the suit hereinafter referred to it was and still is a corporation duly organized and existing under and by virtue of an act of Congress entitled "An act to incorporate the Supreme Lodge of the Knights of Pythias," approved June 29, 1894; which said act is in words and figures as follows, to wit: "Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That Geo. B. Shaw of the city of Eau Claire, State Wisconsin; Wm. W. Blackwell, of the city of Henderson, State of Kentucky; Walter B. Ritchie of the city of Lima, State of Ohio; Rob't L. C. White, of the city of Nashville, State of Tennessee; Philip T. Colgrove, of the city of Hastings, State of Michigan; and Tracy R. Bangs of the city of Grand Forks, State of North Dakota, officers and members of the Supreme Lodge Knights of Pythias, and their successors be and they are hereby incorporated and made a body politic and corporate in the District of Columbia by the name of 'The Supreme Lodge Knights of Pythias;' and by that name it may sue and be sued, plead and be impleaded in any court of law or equity, and may have and use a common seal, and change the name at pleasure, and be entitled to use and exercise all powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia." That on the third day of March, 1896, Josephine R. Withers commenced an action at law against petitioner in the circuit court of Hale county, Alabama, to recover the amount of a policy of insurance issued by defendant, in which said plaintiff was the beneficiary, as shown by the com-

42 plaint on pages 1, 2, 3, and 4 of the certified copy of the record in said cause, herewith filed and made part of this petition.

2. That, as appears from said certified record, petitioner, within

the time required by law, filed in said circuit court for Hale county, Alabama, its petition to remove said cause; that it appeared in and by the original complaint and by the petition in said cause that said action was a suit of a civil nature at common law, in which the matter in dispute exceeded, exclusive of interest or costs, the sum or value of two thousand ($2,000.00) dollars, and that the controversy therein arose under the Constitution and laws of the United States, and that petitioner was at the time of the institution of said suit and has ever since been and still is a corporation organized and existing under and by virtue of the laws of the United States. See pages 5 and 6 of the Certified Record.

That petitioner filed with said petition a proper bond, and that thereafter such proceedings were had that said cause was removed to the United States circuit court for the southern division of the northern district of Alabama, and by consent transferred from said last-mentioned court to the circuit court of the United States for the middle district of Alabama. See pages 7, 8, 9, 10 of the Certified Record.

3. That thereafter such proceedings were had in said circuit court that said cause was tried on the testimony and agreements of counsel, as shown by the bill of exceptions—see pages 10 to 27 of the Certified Record—and a judgment was rendered in said court in favor of the plaintiff and against the petitioner for the sum of three thousand three hundred ninety-two ($3,392.54) and $\frac{54}{100}$ dollars, besides costs. See pages 9 and 10 and pages 27, 28, 29, 30, and 31 of the Certified Record.

4. That thereafter petitioner applied for and obtained a writ of error from said judgment to the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana. See — 32-34
43 of the Certified Record. That thereafter such proceedings were had in the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, that on, to wit, May 24th, 1898, said court rendered a judgment affirming all things — said judgment of the circuit court of the United States for the middle district of Alabama, hereinabove set out, and further directing that said petitioner and his sureties pay the costs of said cause. See pages 38 and 39 of the Certified Record.

That petitioner further shows unto your honor that the matter in controversy exceeds the sum of two thousand ($2,000.00) dollars besides costs, and that the controversy arose under the Constitution and laws of the United States.

Petitioner further shows unto your honor that said United States circuit court of appeals for the fifth circuit erred to the injury of petitioner in this:

1st. That said circuit court of appeals for the fifth circuit held that there had been no forfeiture of the certificate of insurance set out.

2. Said circuit court of appeals for the fifth circuit erred in holding that the secretary of the section of the Knights of Pythias at Greensboro, Alabama, was the agent of the board of control.

3. Said court erred in holding that the deposit of money in the

post-office at Greensboro, Alabama, by Chadwick, the secretary of the section, on October 31st was a payment to the board.

4. Said court erred in affirming the judgment of the circuit court of the United States for the middle district of Alabama.

Petitioner herewith tenders a certified copy of the record and proceedings of said United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, and bond in the sum of six thousand dollars ($6,000.00), with sufficient surety, which said amount was fixed by agreement between counsel for petitioner and said Josephine R. Withers, defendant in error in said circuit court, and prays that your honor will approve said bond and grant petitioner a writ of error directed to said judges of said United States
44 circuit court of appeals, commanding and requiring them to certify the record and proceedings concerning the same to the Supreme Court of the United States, together with the writ of error, in order that justice may be done in the premises; and, as in duty bound, petitioner will ever pray.

THOS. G. JONES,
Attorney for Petitioner and Plaintiff in Error in Circuit Court of Appeals.

THE STATE OF ALABAMA, }
Montgomery County. }

Personally appeared before me, E. L. May, a notary public in and for said State and county, Chas. P. Jones, who is known to me, and who, being by — first duly sworn, deposes and says that he is one of the attorneys for petitioner in said above petition mentioned; that he has read said petition and knows the contents thereof, and that the same are true as therein set forth.

CHAS. P. JONES.

Sworn to and subscribed before me this third November, 1898.
[SEAL.]
E. L. MAY,
Notary Public, Montgomery County, Alabama.

Endorsed: Filed November 15, 1898. J. M. McKee, clerk.

45 *Bond for Writ of Error.*

Know all men by these presents that we, The Supreme Lodge Knights of Pythias, as principal, and The National Surety Company, a New York corporation, doing business in the State of Alabama, as surety, are held and firmly bound unto Josephine R. Withers in the full and just sum of six thousand ($6,000.00) dollars, to be paid to the said Josephine R. Withers, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this second day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of

November, 1897, in a suit depending in said court between said Supreme Lodge Knights of Pythias and said Josephine R. Withers, a judgment was rendered against the said Supreme Lodge Knights of Pythias, said judgment being rendered on May 24th, 1898, affirming a judgment of the circuit court of the United States for the middle district of Alabama, dated July 6th, 1897, for the sum of $3,392.54, and the said Supreme Lodge Knights of Pythias having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Josephine R. Withers, citing and admonishing her to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof:

Now, the condition of the above obligation is such that if the said Supreme Lodge Knights of Pythias shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

46 BOARD OF CONTROL, ENDOWMENT RANK, KNIGHTS OF PYTHIAS,

[SEAL.] By H. B. STOLTE, *Sect.*

[SEAL.] NATIONAL SURETY COMPANY.

ADAMS GOODRICH,
Resident Vice-President.

HENRY L. AYRES,
Resident Assistant Secretary.

Approved:

E. D. WHITE,
Associate Justice of the Supreme Court U. S.

Endorsed: Filed Nov. 15, 1898. J. M. McKee, clerk.

47 *Certificate.*

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 47 pages, numbered from *a* to 46, contain a true, full, and perfect copy of the record in a cause lately pending in said court, wherein The Supreme Lodge of the Knights of Pythias was plaintiff in error and Josephine R. Withers was defendant in error, as the same appears of record and on file in my office.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 15th day of November, A. D. 1898.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 17,217. U. S. C. C. of appeals, 5th circuit. Term No., 632. Supreme Lodge Knights of Pythias, plaintiff in error, *vs.* Josephine R. Withers. Filed December 12th, 1898.